

86th Legislative Session – 2011

Committee: Joint Appropriations

Wednesday, January 26, 2011

P - Present
E - Excused
A - Absent

Roll Call

P Sutton
P Haverly
P Heineman
P Novstrup (Al)
P Peters
P Putnam
P Rampelberg
P Dennert
P Wismer
P Juhnke
P Bolin
P Romkema
P Dryden
P White
P Tidemann
P Carson
P Brown, Vice-Chair
P Wink, Chair

OTHERS PRESENT: See Original Minutes

The meeting was called to order by Representative Dean Wink.

Office of the Attorney General

Mr. Marty Jackley, Attorney General, introduced his staff present at the meeting – **Ms. Kay McLain**, Business Manager; **Mr. Charles McGuigan**, Chief Deputy Attorney General; **Mr. Bryan Gortmaker**, DCI Director; **Mr. Jon Bierne**, Director of Training Facility; **Ms. Delane Smith**, Director of Consumer Division; and **Ms. Sara Rabern**, Victims Witness Program.

For FY2012, the Governor recommends a budget of \$20,981,510; comprised of \$8,963,331 in general funds, \$4,815,535 in federal fund expenditure authority, and \$7,202,644 in other fund expenditure authority, and 173.5 FTEs. This is a reduction of \$923,548 in general funds, an increase of \$162,404 in federal funds expenditure authority, an increase of \$488,449 in other fund expenditure authority, and a increase 2.0 FTEs from FY2011.

Distributed to the committee was a handout listing the agency's response to the committee's session preparation questions (**Document #1**). Attorney General Jackley explained that the office will be eliminating a portion of the summer intern program and \$50,000 worth of advanced field training for law enforcement statewide to comply with the 10% budget cut proposed for FY2012.

Other activities that will be changed under the FY2012 budget proposal include:

- Consumer Division – decrease of \$197,081 in general funds to utilize current consumer settlement funds;
- 24/7 Sobriety Program – decrease of \$60,000 in general funds for personal services and a decrease of \$9,000 in general funds for software maintenance fee to utilize fees from the offender in the program. Attorney General Jackley noted this change is dependent on the passage of a fee increase bill submitted this session; and
- Charging for Non-traditional agency work – the office will charge for services to state agencies for general litigation, to represent the Board of Medicine, and for prison litigation.

Senator Deb Peters asked about the budget changes for the 24/7 Sobriety Program. Attorney Jackley responded that the changes would remove the funding from general funds and make the program funded by offender pay. There is a total of \$69,000 that will be removed from general funds. The Governor's proposed budget included \$30,000 for half of an administrator. Attorney General Jackley is proposing that the remaining \$30,000 for the administrator's salary and \$9,000 for software be removed from general funds and placed in other funds. The offenders' participation fee will fund the expense of the program. Currently, people on the 24/7 program pay \$2 per day to have PBT performed twice a day. This \$2 fee is directed to the sheriffs. The people utilizing the SCRAM bracelets pay \$6 per day, of which \$1 goes to sheriffs for administrating the program and \$1 of the fee goes to help run the 24/7 program. The proposed legislation asked for a participation fee for the PBT, SCRAM bracelets, and Interlock program.

Senator Jeffrey Haverly asked if the budget cuts were sustainable. Attorney General Jackley said that the reduction of \$50,000 worth of advanced field training for law enforcement statewide is sustainable. Other areas, such as the Consumer Division reduction, may only be a saving for 3 to 5 years.

Attorney General Jackley commented that the office will be initiating new activities during the FY2012 budget. The office will be taking over responsibility for the Brand Board Investigators,

including 2.0 FTEs and \$160,000 in other fund expenditure authority. The two transferred positions will become DCI agents and will be paid with other funds.

The other activity that will be initiated is the taking over of the responsibilities for the Insurance Fraud Unit. With this, the office will be transferred from the Department of Revenue and Regulation (DRR) 3.0 FTES and \$226,676 in other fund expenditure authority. Attorney General Jackley stated his concern that the Insurance Fraud Unit had 4.0 FTEs under the DRR, but only 3.0 FTEs are being transferred. He may have a shortfall in with attorney in the office to complete the work in addition to the already assigned duties. According to statute, an attorney is supposed to be assigned to this division. Without the office receiving one, an adjustment to the state statute may be needed.

Senator Corey Brown requested the Office of the Attorney General to find out whether the 1.0 FTE dedicated to the Insurance Fraud Unit was an actual person in the office or work performed through a contract.

The Governor recommends a cut in general funds of \$923,548 for FY2012. This is a total decrease of 9.3%, but if the bond payment is removed the actual general fund decrease is a 10% reduction. The general fund budget cuts include:

- Legal services provided to the Investment Council – \$16,928;
- DCI elimination of agent land phone lines - \$9,240;
- Law enforcement office training supplies - \$50,000;
- Legal service contracts - Currently the Office of the Attorney General has 4 outside contracts and only 1 pertains to attorney general work, the other three pertain to other agencies. A cut would ultimately be a shift to the other agencies; therefore Attorney General Jackley has not proposed this cut;
- Part-time staff for the SCRAM Program - \$30,000;
- DCI record check position - \$55,000;
- Fewer computer rotations - \$95,000;
- Reduced DCI equipment purchases - \$31,000;
- Law interns and DCI interns - \$20,927;
- Bond payment adjustment - \$1,388;
- Consumer Division operating costs - \$140,000. Attorney General Jackley noted that the Consumer Division should be self sufficient and not rely on general funds with the exception of 0.5 FTE for a lawyer;
- Space billing reduction – changed to \$11.28 for a total decrease of \$29,652;
- Internal service funds (adjustments to central services) - \$22,364; and
- Decrease to get the 10% Governor’s recommendation - \$412,049.

Distributed was a handout entitled “Additional cuts to replace bond payment reduction to meet 10% cut” (**Document #2**). Attorney General Jackley said that the bond payment of \$412,000 in

general funds needs to be paid. Therefore, he has proposed other cuts that total \$412,000 to meet the 10% cut recommended by the Governor.

24/7 Program – an additional reduction of \$30,000 in general funds. The entire \$69,000 to operate the program will be removed from general funds. The fees from offenders participating in the 24/7 program will make the program self sustaining. Attorney General Jackley reminded the committee that the sustainability of the program is dependent on legislative approval for the increased participation fees. The proposed legislation is Senate Bill 33; which would allow for the Office of the Attorney General to set the participation fee through the Rules Committee. It is estimated that the PBT program fee will increase from \$2 per day to \$2.50 per day.

Senator Brown stated his concern for the Attorney General's proposal – the general bill funding state agencies for FY2012 will be finalized in March, but the fee increase proposal will not be finalized in the rules process until later this fall. Occasionally there are issues with the rules process. He does not want to approve a general bill that does not fully fund an office.

Senator Haverly suggested the office propose legislation that has a set increase or a minimum/maximum for an increase window and have the increase amount set in rule.

Attorney General Jackley responded that if there is a problem in the rules process with the proposed fee increase, the office still has the ability to fund the program by keeping the \$1 fee for the SCRAM bracelets that go to the county sheriffs, because the \$1 fee only goes to the sheriffs if the Office of the Attorney General has sufficient funding for the program.

Representative H. Paul Dennert asked if there are other areas that could affect county funds. Attorney General Jackley stated that four are three areas:

- 24/7 program (think can sustain with the proposed fee increase);
- Sturgis Rally gang database maintenance fee – will continue to provide services to the rally, but a small amount of funds may be pushed to the local levels of government;
- Consumer Division – can sustain the budget cuts for three to five years; and
- Legal services – an attorney may be working on another issue and not be able to assist when needed.

Annual MAFIN payment – a reduction in general funds of \$43,532. This would move the expenses for the criminal histories and finger prints with the FBI to the Record Check Fund.

Annual Morphotrak payment – a reduction in general funds of \$10,364. This would move the hardware related expenses for MAFIN to the Record Check Fund. This is used for background checks. There may be an increase in the cost of a background check.

RISS connection fee – a reduction in general funds of \$9,720. This is the backbone communication with the state law enforcement officers. The Office of the Attorney General anticipates federal funding will be available, therefore the funds will be removed from the general fund and transferred to federal fund expenditure authority.

Sturgis Rally Gang Database Maintenance Fee – a reduction of \$4,500 in general funds. The office is recommending to move the expenses for the Sturgis Rally gang database maintenance fee from the general fund to the Drug Control Fund. Attorney General Jackley stated that the office is looking at other funds to support the fee, but some of the expenses may need to be passed to the counties.

BIT Reduction – a reduction of \$49,500 in general funds. Attorney General Jackley informed the committee that due to confidentiality, the office has its own internal computer staff. It was determined through reviewing the HEET tickets, that the Attorney General's Office was completing over 51% of the HEET tickets. Therefore, the office is proposing to remove funds that would be paid to BIT for the services.

Consumer Attorney – a general fund reduction of \$42,081. The office is proposing that half of one position be removed from the general fund and be funded by the Consumer Funds. The office should be able to sustain this budget cut for three to five years.

Legal services costs to other agencies for non-traditional services – a reduction in general funds of \$213,352. The office will be keeping track of nontraditional work and charge for the additional nontraditional agency work for services rendered at less than the \$150 per hour rate. This would allow for agencies to pay for in-house services versus through contracts.

Attorney General Jackley updated the committee on potential liabilities from current litigation matters.

- School funding – in the third amended complaint, the plaintiffs have requested \$133 million to \$405 million. Attorney General Jackley stated that this needs to remain as a potential liability throughout the appropriation process and reserves.
- Retirement System – the South Dakota Retirement System (SDRS) is in a current lawsuit for approximately \$30 million.
- Tobacco Settlement – the state settled with certain tobacco companies. The state had a responsibility to pursue with the non-settling companies in a \$23 million lawsuit.
- Brome Mine Superfund in the Black Hills – In the event that there is a maintenance fee, and a continuing fee associated with the clean-up of the area, the state is required to pay 10% of the total cost. South Dakota is still trying to collect from the company, but the state is responsible for 10% of the continuing maintenance.
- Yankton Sioux Tribe – boundary issue with the Yankton Sioux Tribe.
- Flandreau Gaming Case – This case may have consequences beyond Flandreau.

Attorney General Jackley stated that the only multistate lawsuit that has cost the state money is the Health Care Lawsuit. The total expense has been \$1,000.

Representative Dennert asked about any challenge to the constitution Amendment K. Attorney General Jackley responded that the amendment is not currently being challenged, but that could change. He received a letter telling him to declare Amendment K unconstitutional or file a lawsuit. The mission of his office is to defend the legislature and the South Dakota Constitution. It is the responsibility of the Unified Judicial System to declare issues unconstitutional.

Representative Susan Wismer asked if the Attorney General would be receiving a pay cut for the FY2012 budget. In response, Attorney General Jackley stated that a pay cut for personal services is not requested.

In response to **Representative Lance Carson's** question about the Chevron matter, Attorney General Jackley stated that Mr. Dennis Rounds is in charge of the Petroleum Release Funds and he has retained private counsel to address the issue. Therefore the Office of the Attorney General is not directly handling the issue. However, the office is willing to assist, especially if it becomes a multistate lawsuit.

Senator Peters asked about the volatility of the Byrne Grant funds. Attorney General Jackley responded that two major changes have occurred – the construction of the DCI building, and the dissipation of the Byrne grant. The appropriations process through the years has shifted funds from the Byrne Grant to the general funds. The total fund for the Attorney General's office is approximately \$280,000.

Senator Haverly requested the office provide future projections of the sustainability of other funds.

Office of the School and Public Lands Continued

Mr. Jarrod Johnson, Commissioner of School and Public Lands (SPL), and **Mr. Justin Ohleen**, Deputy Commissioner of School and Public Lands, distributed a handout entitled "Office of School and Public Lands: Budgetary Analysis" (**Document #3**) This handout shows the office's revised budget recommendation. The first recommendation was presented to the committee on January 21, 2011.

Deputy Commissioner Ohleen highlighted some of the proposed general fund reductions:

- \$42,394 from the personal services budget;
- \$7,800 from the travel budget;
- \$2,500 from the contractual services budget; and

- \$2,010 from the supplies and materials budget.

Deputy Commissioner Ohleen stated that the SPL is not certain about the specifics to where all the cuts would occur. The office may need to take pay cuts or eliminate an FTE to make the reduction in personal services.

Senator Larry Tidemann asked about the \$800,000 in general funds the office previously requested for dam repair. Deputy Commissioner Ohleen responded that it wasn't the intent to ask the committee to overrule the Governor, but rather present the information to the committee that the SPL felt was a project that received a couple years of attention and will need a solution. The seventeen high hazard dams remain a priority, but it's the decision of the appropriations committee whether or not it remains a priority in FY2012.

Senator Haverly asked that the SPL work with the Department of Environment and Natural Resources and the Department of Game, Fish and Parks to streamline the dam assessment and repair issue. The costs, responsibility, and assessment associated with the dam study and repair is convoluted.

Representative Dean Wink asked if there was any concern in the office in regards to possible benefit payouts. Commissioner Johnson stated that it is the SPL policy to not fill positions and absorb the duties with other position depending on when the payout occurred. The office would make every effort to absorb the cost before asking for additional funds.

Senator Haverly asked about maintaining the possible vacant FTE. Commissioner Johnson stated that the office would try to perform duties without the person, but he is not certain if that could be done long-term. He is very hesitant to ask the appropriations for additional funds.

MOTION: ADJOURN

Moved by: Haverly
Second by: Peters
Action: Prevailed by voice vote.

Lisa Shafer
Committee Secretary

Dean Wink, Chair